

No. 12034

United States
Court of Appeals
for the Ninth Circuit

PACIFIC COAST MARINE FIREMEN, OIL-
ERS, WATERTENDERS AND WIPERS AS-
SOCIATION, an unincorporated association,
Appellant,

vs.

COASTWISE (PACIFIC FAR EAST) LINE, a
corporation,
Appellee.

Transcript of Record

Appeal from the District Court of the United States
for the Northern District of California,
Southern Division

NOV 1 - 1948

PAUL P. O'BRIEN



No. 12034

United States
Court of Appeals
for the Ninth Circuit

PACIFIC COAST MARINE FIREMEN, OIL-
ERS, WATERTENDERS AND WIPERS AS-
SOCIATION, an unincorporated association,
Appellant,

vs.

COASTWISE (PACIFIC FAR EAST) LINE, a
corporation,
Appellee.

Transcript of Record

Appeal from the District Court of the United States
for the Northern District of California,
Southern Division

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Appeal:	
Certificate of Clerk to Transcript of Record	
on	20
Designation of Record on.....	18
Designation of Additional Record on.....	19
Notice of	16
Order Extending Time to Docket.....	17
Complaint for Damages for Breach of Contract	2
Exhibit A—Agreement Coastwise Trade dated	
Dec. 7, 1944, amended July 16, 1946, and	
Supplemental Agreement dated June 19.	
1947	8
Certificate of Clerk to Transcript of Record on	
Appeal	20
Designation of Record on Appeal.....	18
Designation of Additional Record on Appeal...	19
Motion for Stay of Proceedings.....	14
Minute Order—May 24, 1948—Denying Motion	
to Stay Proceedings	16
Names and Addresses of Attorneys.....	1
Notice of Appeal	16
Order Denying Motion to Stay Proceedings—	
Minute Order of May 24, 1948.....	16
Order Extending Time to Docket Appeal.....	17

NAMES AND ADDRESSES OF ATTORNEYS

GLADSTEIN, ANDERSEN, RESNER and
SAWYER,

240 Montgomery Street,
San Francisco, California.

Attorneys for Defendant and Appellant.

BROBECK, PHLEGER and HARRISON,

111 Sutter Street,
San Francisco, California.

Attorneys for Plaintiff and Appellee.

In the District Court of the United States for the
Northern District of California,
Southern Division

No. 27920-G

COASTWISE (PACIFIC FAR EAST) LINE, a
corporation,

Plaintiff,

vs.

PACIFIC COAST MARINE FIREMEN, OIL-
ERS, WATERTENDERS AND WIPERS
ASSOCIATION, an unincorporated associa-
tion,

Defendant.

ACTION FOR DAMAGES FOR BREACH OF
CONTRACT UNDER THE LABOR MAN-
AGEMENT RELATIONS ACT OF 1947

Coastwise (Pacific Far East) Line, plaintiff
herein, for cause of action against Pacific Coast
Marine Firemen, Oilers, Watertenders and Wipers
Association, an unincorporated association, defen-
dant herein, alleges:

I.

This action arises under the Labor Management
Relations Act of 1947, Chapter 120, Public Law
101, Title III, Section 301, hereinafter referred
to as the "Act", and this court has jurisdiction
over this cause of action pursuant to said Act.

II.

Plaintiff, Coastwise (Pacific Far East) Line, a
corporation, was at all times herein mentioned,

and now is, a corporation duly organized and existing under and by virtue of the laws of the State of Oregon. Plaintiff is, and at all times herein mentioned, has been the operator of the vessel SS Joel Chandler Harris.

III.

Defendant is now and at all times mentioned has been an [1 *] unincorporated association composed of employees performing work in the Engine Room Department of vessels, including those operated by plaintiff, sailing out of Pacific Coast ports of the United States to other American ports and ports of foreign countries upon the high seas and upon the navigable waters of the United States. Defendant is and at all times herein mentioned has been a labor union or labor organization with its principal office and place of business in the City and County of San Francisco, Northern District of California, and is now and at all times herein mentioned has been engaged in its business and activities as a labor union or organization in the City and County of San Francisco, Northern District of California.

IV.

Defendant is hereinafter sometimes referred to as the "Union". Defendant at all times herein mentioned represented employees of plaintiff in the Engine Room Department of the SS Joel Chandler Harris as a labor organization and collective bar-

* Page numbering appearing at foot of page of original certified Transcript of Record.

gaining agent in accordance with the provisions of the agreement hereinafter set forth.

V.

On or about December 7, 1944, plaintiff and defendant made and entered a certain contract providing for, among other things, the wages, hours and working conditions, and other conditions of employment of employees employed by plaintiff in the Engine Room Department of vessels operated by plaintiff including the SS Joel Chandler Harris. Said contract is one of Maritime service, and was entered into between plaintiff as employer and defendant as a labor organization representing employees of plaintiff in the shipping industry, an industry affecting commerce as defined in the Act. A true and correct copy of said contract is attached hereto as Exhibit A and made a part hereof by reference. Said contract and the provisions thereof were in full force and effect at all times mentioned.

VI.

In and by said contract plaintiff agrees, among other things, to give preference of employment to members of defendant, and defendant agrees to "furnish unlicensed Engine Room personnel as required by the companies, [2] parties to this agreement", including plaintiff which is one of the companies parties to said contract. Said contract further provides that "There shall be no strikes or stoppages of work as long as the covenants of this agreement are performed."

VII.

On or about February 16, 1948, the SS Joel Chandler Harris was lying in the navigable waters of the United States in the Port of San Pedro, California, and was in the process of discharging its cargo. At said time and place defendant instructed and ordered the employees of plaintiff in the Engine Room Department of the SS Joel Chandler Harris, said employees being members of defendant, to refuse to work and service the engines of said SS Joel Chandler Harris and to refuse to furnish steam for the discharging of the cargo of the SS Joel Chandler Harris. At or about 10:30 a.m. and thereafter on said February 16, 1948, the said employees of the said Engine Room Department of the SS Joel Chandler Harris, pursuant to the instructions of defendant, refused to work the said engines of the SS Joel Chandler Harris and to furnish steam for the discharging of the cargo of said vessel. From 10:30 a.m. on said February 16, 1948, to and including the present time, defendant and its members have refused to work the engines of the SS Joel Chandler Harris and to furnish steam for the discharging of cargo of said vessel. Defendant then and there in violation of its said contract engaged in a strike and stoppage of work against plaintiff by so instructing its members, the said employees of the Engine Room Department of the vessel, to refuse to work said engines and to furnish steam for the discharging of cargo. As a result thereof plaintiff has been unable to discharge the cargo of said

vessel and said vessel has been delayed and plaintiff has suffered damages as a result thereof as will be more particularly hereinafter alleged.

VIII.

On February 16, 1948, and at all times from said date to and including the present time, plaintiff demanded of defendant that defendant, pursuant to its contract with plaintiff, furnish Engine Room employees and personnel to man said vessel, but during all of said time defendant [3] engaged in a strike and stoppage of work as aforesaid and violation of its said contract by instructing its members not to man said vessel and to furnish steam as aforesaid, and by refusing and failing to furnish Engine Room employees and personnel for said vessel.

IX.

At the time of filing of this action the said vessel is still at the Port of San Pedro, California, and defendant, contrary to its contract with plaintiff, is still engaged in a strike and stoppage of work by refusing to man said vessel and to furnish steam for the discharge of cargo and by refusing to furnish personnel and employees for the Engine Room Department of said vessel.

X.

As a direct and proximate result of said strike and stoppage of work by defendant, and the refusal and failure of defendant to furnish personnel and employees for the Engine Room Department of said vessel, plaintiff has been damaged to date in the sum and amount of \$4,774.00.

XI.

At the time this action is filed the violations of said contract by defendant as aforesaid are continuing, and plaintiff is unable to allege with particularity at this time how long said violations will continue and the amount of damages which will result from said continued violations. Plaintiff alleges that for each additional day the said vessel is delayed by defendant as aforesaid, plaintiff will suffer damages in the approximate sum of \$1,600.00 per day and plaintiff prays leave to amend this complaint at the appropriate time when said damages are definitely ascertained.

XII.

Plaintiff has at all times performed all conditions precedent provided or required by the contract herein referred to and has performed each and all of its obligations under said contract.

Wherefore, plaintiff prays judgment against defendant in the total sum of \$4,774.00, together with interest thereon at the legal rate from [4] date thereof to date of payment and for judgment in the amount of \$1,600.00 per day for each day the said vessel is delayed from and after February 19, 1948, and for costs of this action.

BROBECK, PHLEGER &
HARRISON,
MARION B. PLANT,
ROBERT E. BURNS,
Attorneys for Plaintiff.

EXHIBIT "A"

AGREEMENT COASTWISE TRADE

This agreement, entered into this Seventh day of December, 1944, and amended July 16, 1946, by the Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers Association, Party of the First Part, hereinafter known as the Union; and the Pacific American Shipowners Association on behalf of its members here listed:

Baxter & Co., J. H.
 Burns Steamship Co.
 Chamberlin & Co., W. R.
 Coastal Steamship Co.
 Coastwise Line
 Coastwise (Pacific Far East) Line
 Coastwise Steamship & Barge Co., Inc.
 Consolidated-Olympic Line
 Dorothy Philips Steamship Co.
 Freeman & Co., S. S.
 Griffiths & Sons, James
 Griffiths Steamship Co.
 Hammond Lumber Company
 Hammond Shipping Co., Ltd.
 Kingsley Company of California
 Olson & Co., Oliver J.
 Pope & Talbot, Inc. (McCormick Steamship
 Co. Division)
 Ramelius, Capt. J.
 Schafer Bros. Steamship Lines
 Sudden & Christenson [5]
 Wheeler-Hallock Co.

West Coast Steamship Co.

Wood Lumber Co., E. K.

covering their vessels operating in the steam schooner trade, Party of the Second Part, hereinafter known as the "Shipowners",

Witnesseth as Follows:

* * * *

SECTION 5.

CONDITIONS OF EMPLOYMENT

Rule 1. The members of the Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers Association shall be given preference of employment, and the parties agree that the union shall furnish unlicensed engine room personnel as required by the companies, parties to this agreement.

Rule 2. There shall be no discrimination against any man for union activity.

Rule 3. Authorized representatives of the Union shall be allowed to visit members of the Union aboard ship at any time.

Rule 4. No man shall be required to work under unsafe conditions.

Rule 5. There shall be no strikes or stoppages of work as long as the covenants of this Agreement are performed.

Rule 6 (a). When Ships Are Laid Up: Any man discharged who has been employed for fifteen days or less shall be given first-class transportation and subsistence back to the port of engagement. First-class transportation shall include railroad

ticket and berth. Subsistence shall be at the rate of \$4.00 per day, effective July 16, 1946.

(b) Men that receive transportation shall not return to the same ship within ten days.

* * * *

SECTION 7. GENERAL

Rule 1. No clarification of or change in the agreement shall be effective or issued by either party unless dated, numbered, and signed by both parties.

Rule 2. It is agreed that any changes in this agreement that are [6] mutually agreeable to both parties may be made and incorporated in the agreement at any time during the life of this agreement. Any such changes in respect to wages shall be subject to the approval of the National War Labor Board, or its successor.

* * * *

SECTION 9. PORT COMMITTEES AND LABOR RELATIONS

A "Port Committee" shall be set up in each of the following ports: San Francisco, Seattle, Portland and San Pedro.

Each Port Committee shall be composed of an equal number of members appointed by and representing each party to this agreement, but shall not exceed three members from either party. Each party shall have an equal number of votes.

The duty of each Port Committee shall be to hear and adjudicate any dispute relative to the interpretation or performance of this agreement

which may arise between the parties to this agreement, at that Committee's particular port.

After notice by either party, the Port Committee shall convene within twenty-four hours to take action on the dispute.

If any Port Committee becomes deadlocked, that Port Committee shall immediately refer the matter to the San Francisco Port Committee for decision.

If the San Francisco Port Committee becomes deadlocked upon the decision of any matter, within forty-eight hours a referee shall be selected by the San Francisco Port Committee to hear and adjudicate that particular matter.

If a referee cannot be agreed upon, either party may request the Secretary of Labor to appoint a referee to hear and adjudicate the particular dispute; such hearing shall be held in San Francisco.

The decision of the Port Committee shall be in writing and shall be binding upon both parties unless such decision is changed or revoked by the Port Committee of San Francisco.

All decisions must be referred promptly to the San Francisco Port Committee for ratification, nullification, or change.

All decisions of the San Francisco Port Committee shall be in [7] writing, signed by all members of that Committee, and shall be final and binding upon both parties to this agreement.

All decisions of a referee shall be signed by that referee and shall be final and binding upon both parties to this agreement.

All costs of the referee shall be borne equally by both parties.

SECTION 10. TERMINATION

The said agreement as hereby amended shall be binding upon the respective parties to and including June 14, 1947, and shall be considered as renewed from year to year thereafter between the respective parties hereto unless either party hereto shall give written notice to the other of its desire to amend or terminate the same.

Any such notice shall be given at least thirty days prior to the expiration date, and after such notice has been given specific proposals must then be submitted and negotiations commenced within 10 days.

If such notice shall not be given, the agreement shall be deemed to be renewed for the succeeding year.

Dated at San Francisco, July 16, 1946.

PACIFIC AMERICAN

SHIPOWNERS ASSOCIATION,

By /s/ J. B. BRYAN.

MARINE FIREMEN, OILERS,

WATERTENDERS & WIPERS

ASSOCIATION,

By /s/ V. J. MALONE.

* * * *

AGREEMENT

The Pacific American Shipowners Association and the Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers Association hereby rescind their Memorandum of Agreement of June 14, 1947 relative to the Coastwise Trade and agree that their existing collective bargaining contract

relative to the Coastwise Trade shall be extended for a period of one year from and after June 15, 1947, without change except that the Kleinsorge Award increase in monthly wage rates shall be placed in effect retroactive to April 1, 1947 and that there shall be granted, effective as of the date of execution hereof, the additional wage increase and the holiday pay for which provision is made in paragraphs [8] 2(b) and 2(d) of the agreement of even date wherewith relative to the Offshore Trade.

Dated June 19, 1947.

PACIFIC AMERICAN
SHIPOWNERS ASSOCIATION,
/s/ J. B. BRYAN.

PACIFIC COAST MARINE
FIREMEN, OILERS, WATER-
TENDERS & WIPERS
ASSOCIATION,
/s/ V. J. MALONE.

Signed subject to approval of Maritime Commission in Respect to General Agency vessels.

Pacific Coast Marine Firemen, Oilers, Watertenders
and Wipers Association Contract Changes

Effective June 19, 1947

Revised Wage Scale

Rating	Effective April 1, 1947	Effective June 19, 1947
Electrician	\$312.17	\$327.78
Maintenance Electrician	251.22	263.78
Fireman	190.80	200.34
Oilers—Steam	190.80	200.34
Oilers—Diesel	206.97	217.32
Combination Men	196.10	205.91
Wipers	185.50	194.78

OVERTIME RATE

Effective April 1, 1947

The rate of overtime shall be \$1.27 per hour.

HOLIDAYS

Overtime pay shall be paid for all work performed on any or the nine holidays described in the basic agreement at sea or in port. But, in the case of holidays at sea occurring on Sunday, the following Monday shall not be deemed a holiday. No double overtime shall be paid for work performed on holidays falling on Sundays and day workers shall not receive overtime pay unless required to work.

7/9/47

[Endorsed]: Filed Feb. 19, 1948.

[9]

[Title of District Court and Cause.]

MOTION FOR STAY OF PROCEEDINGS

Comes now the defendant above named and, for the reasons and upon the grounds hereinafter set forth, moves the above entitled Court for its order staying proceedings herein pursuant to Section 3 of the Federal Arbitration Act (9 U.S.C.A. Section 3).

Said motion is made upon the grounds that it appears from the face of the complaint on file herein, and the exhibit attached thereto, that one or more issues are presented which are referable to arbitration under a written collective bargaining agreement.

Said motion is based upon the said complaint, the said written collective bargaining agreement, a copy of which is attached to said complaint as an exhibit, and upon a Memorandum of Points and Authorities herewith submitted.

Said motion is further based upon the fact, which said defendant hereby asserts to be true, that the said defendant (applicant in this motion) is not in default in proceeding with such arbitration under the said collective bargaining agreement.

Dated this 12th day of May, 1948.

GLADSTEIN, ANDERSEN,
RESNER & SAWYER,

By NORMAN LEONARD,
Attorneys for Defendant.

Memorandum of Points and Authorities

9 U.S.C.A. Section 3

Agostine Bros. Building Corp. vs. U. S. 142
Fed. (2d) 854 (4th Circuit)

Gerald Donahue vs. Susquehanna Collieries
Co., 138 Fed. (2d) 3 (3rd Circuit)

Shanferoque Coal & Supply Co. vs. West-
chester Service Co., 70 Fed. (2d) 297 (2nd
Circuit)

(Acknowledgment of Receipt of Copy.)

[Endorsed]: Filed May 13, 1948.

[10]

District Court of the United States, Northern
District of California, Southern Division

At a Stated Term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 24th day of May, in the year of our Lord one thousand nine hundred and forty-eight.

Present: The Honorable Louis E. Goodman,
District Judge.

No. 27920-G Civil

COASTWISE (PACIFIC FAR EAST) LINE,
Etc.,

vs.

PACIFIC COAST MARINE FIREMEN, OIL-
ERS, WATERTENDERS AND WIPERS
ASSOCIATION, Etc.

ORDER DENYING MOTION TO STAY
PROCEEDINGS

This case came on regularly this day for hearing on motion to stay proceedings. After hearing Messrs. Brotsky and Lang, attorneys herein, it is Ordered that said motion be denied. [11]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers

Association, an unincorporated association, defendant above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the order of the above entitled court denying motion to stay proceedings pending arbitration, entered in this action on the 24th day of May, 1948.

Dated June 15, 1948.

GLADSTEIN, ANDERSEN,
RESNER & SAWYER,
GEORGE A. ANDERSEN,
Attorneys for Defendant.

(Acknowledgment of Receipt of Copy.)

[Endorsed]: Filed June 22, 1948. [12]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO DOCKET

Good cause appearing therefor, it is hereby Ordered that the Appellant herein may have to and including September 10, 1948, to file the Record on Appeal in the United States Circuit Court of Appeals in and for the Ninth Circuit.

Dated July 30, 1948.

DAL M. LEMMON,
United States District Judge.

[Endorsed]: Filed July 30, 1948. [13]

[Title of District Court and Cause.]

DESIGNATION OF RECORD ON APPEAL

Comes now Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers Association, an unincorporated association, defendant and appellant herein, and designates the following as the record on appeal in the above entitled matter:

1. Action for damages for breach of contract under the Labor-Management Relations Act of 1947, filed herein on February 19, 1948.

2. So much of Exhibit A attached to the foregoing as is identified below:

(a) All of page 1 thereof.

(b) All of Section 5 thereof appearing on page 5 thereof.

(c) So much of Section 7 thereof as appears on page 11 thereof.

(d) All of Section 9 and Section 10 thereof and the signatures thereon appearing on pages 15 and 16 thereof.

3. Motion for stay of proceedings filed herein on May 13, 1948.

4. Order denying motion to stay proceedings filed herein on May 24, 1948.

5. This designation of record on appeal.

Dated August 4, 1948.

GLADSTEIN, ANDERSEN,

RESNER & SAWYER,

By GEORGE A. ANDERSEN,

Attorneys for Defendant and Appellant.

(Acknowledgment of Receipt of Copy.)

[Endorsed]: Filed Aug. 5, 1948.

[14]

[Title of District Court and Cause.]

DESIGNATION BY PLAINTIFF AND RE-
SPONDENT OF ADDITIONAL PORTIONS
OF RECORD ON APPEAL

Plaintiff and respondent, Coastwise (Pacific Far East) Line, hereby designates the following portions of the record in the above action in addition to those designated by defendant and appellant in its Designation of Record on Appeal on file herein:

1. The following portions of Exhibit A attached to the Complaint filed herein on February 19, 1948, in addition to those portions of said Exhibit A heretofore designated by defendant and appellant:

(a) The Supplementary Agreement following page 16 of said Exhibit A dated June 19, 1947 and comprising two unnumbered pages.

2. This Designation by Plaintiff and Respondent of Additional Portions of Record on Appeal.

Dated August 17, 1948.

BROBECK, PHLEGER &
HARRISON,
ROBERT E. BURNS,
Attorneys for Plaintiff and Respondent.

(Acknowledgment of Receipt of Copy.)

[Endorsed]: Filed August 19, 1948.

[15]

District Court of the United States,
Northern District of California

CERTIFICATE OF CLERK

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 15 pages, numbered from 1 to 15, inclusive, contain a full, true, and correct transcript of the records and proceedings in the case of Coastwise (Pacific Far East) Line, a corporation, vs. Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers Association, an unincorporated association, Defendant, No. 27920-G, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of \$6.00 and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 9th day of September, A. D. 1948.

(Seal)

C. W. CALBREATH,
Clerk.

[16]

[Endorsed]: No. 12034. United States Court of Appeals for the Ninth Circuit. Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers Association, an unincorporated association, Appellant, vs. Coastwise (Pacific Far East) Line, a corporation, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed September 11, 1948.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

